United Nations ECE/TRANS/WP.30/2018/12

Economic and Social Council

Distr.: General
27 March 2018

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Customs Questions affecting Transport

149th session
Geneva, 12–14 June 2018
Item 3 (b) (i) of the provisional agenda
Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975): Revision of the Convention

Amendment proposals to the Convention

Note by the secretariat

I. Background and mandate

1. At its 148th session, the Working Party considered document ECE/TRANS/WP.30/2018/8, which provides a succinct summary of the discussions so far on proposals to introduce a new Article 11, paragraph 4 bis, as well as further clarifications by the delegation of the Russian Federation. In reply to the three questions by the secretariat in the said document, the Working Party confirmed that the final phrase of Explanatory Note 0.11.4 should remain with Article 11, paragraph 4. The delegation of the Russian Federation stated that a conversion of Explanatory Note 0.11.4 to become new Article 11, paragraph 4 bis would solve its problems with regard to the limited timeframe, according to national law, to bring claims to the court, subject to some changes as contained in its proposal. The Working Party noted that the issue of the consequences of the proposed changes for the national agreements between customs authorities and national associations warranted further assessment. The Working Party mandated the secretariat to prepare, for consideration at its next session, a short document, outlining the rationale behind the Russian proposal and the proposed text of Article 11, paragraph 4, its amended Explanatory Note 0.11.4 and new Article 11, paragraph 4 bis (see ECE/TRANS/WP.30/296, paras. 10 and 11).

GE.18-04786(E)
1804786

Please recycle

II. Rationale of the Russian proposal

2. In a written statement, the Russian delegation stressed that the main idea of the [proposal for new Article] 4 bis is to give the competent authorities and the guaranteeing association the power to come to an agreement with regard to the maximum period, within which the competent authorities have the right to address the courts with claims against the guaranteeing association, notwithstanding the provisions of national legislation. As soon as this power will be given by the TIR Convention, this has legal power superior to national legislation. In this situation, the reference to national legislation, which is now in Explanatory Note 0.11.4 cannot solve the issue, because, in this case, the agreement will be subject to national law and cannot include terms that exceed those provided by national legislation (see ECE/TRANS/WP.30/2018/8, para. 9).

III. Amendment proposals for Article 11, paragraph 4, Explanatory Note 0.11.4 and new Article 11, paragraph 4 bis

10. It is the understanding of the secretariat that, further to the latest discussions in the Working Party, the status of the draft proposals is as follows:

"Article 11

1. (...)

2. (...)

3. (...)

4. The guaranteeing association shall pay the amounts claimed within a period of three months from the date when a claim for payment is made against it.

0.11.4 The time limit [of three months] also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization, referred to in Article 6, paragraph 2 over its position regarding the claim.

4 bis If a guarantee association is asked, in accordance with the procedure set out in this article, to pay the sums referred to in Article 8, paragraphs 1 and 2, and fails to do so within the time limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of law entered into by the guaranteeing association under national law."

IV. Considerations by the Working Party

11. The Working Party may wish to provide guidance to the secretariat on how to pursue the matter.